



ILLINOIS DEPARTMENT OF PUBLIC HEALTH  
OFFICE OF HEALTH CARE REGULATION  
**LONG TERM CARE FACILITY ADVISORY BOARD – SPECIAL MEETING**  
**November 7, 2019 • 10:00 AM**

**APPROVED MEETING MINUTES**

**I. CALL TO ORDER AND INTRODUCTIONS**

Debra Bryars called to order at 10:05 a.m.

**MEMBERS PRESENT:** Donna Ginther (proxy for Ron Nunziato\*), Matt Hartman (proxy for Albert Maurer\*), Mike Bibo\*, Patrick Baalke\* (phone), Mark McCurdy (phone)  
**\*Indicates voting member**

**MEMBERS NOT PRESENT:** Ron Nunziato\*, Dr. Albert Maurer\*, Dr. Alma Labunski\*, Dale Simpson, George Bengel, Kelly Richards, Karen Christensen\*, Martin Gorbien\*, Candice Moore\*  
**\*Indicates voting member**

**IDPH REPRESENTATIVES:** Erin Conley, Jennifer Uhles, Sean Dailey, Sara Wilcockson, Debra Bryars, George Logan, Melinda Snyder

**GUESTS:** Pat Comstock, Kirk Riva, Kim Palermo, Matt Werner, Sherri Mitchell, Patrick Hostert, Laura Vaught, Lori Hendren (phone), Donna Ginther, Matt Hartman

**No quorum met**

**II. NEW BUSINESS:**

**A. Rulemaking Overview**

Erin Conley, rules coordinator for the Department, explained why these rules (informed consent and staffing requirements) are one rulemaking (part 300).

- There is one statutory adoption deadline for both. Staffing proposals deadline of January 1, 2020. IDPH requirements then give us one year to adopt (effective statutory adoption deadline of January 1, 2021) which is the adoption deadline for informed consent. First notice is 45 days – that is a minimum, there is no maximum given to 1<sup>st</sup> notice comment period. Realistically a couple of months is given for public comments. First proposal will not be final proposal.
- Question about ex parte communication. The Department's preference is that everything be in writing as this makes it easier to share with everybody, also to ensure we respond. There is no prohibition on ex parte. Interpretations are not given during 1<sup>st</sup> notice of the rule making as comments are requested. Anyone who comments during 1<sup>st</sup> notice does receive copy of response to comments, 2<sup>nd</sup> notice changes after they've been accepted by JCAR for 2<sup>nd</sup> notice.
- Question about next steps after Advisory Board. It is not 1<sup>st</sup> notice. Advisory Board is separate process. Role of the Advisory Board is to advise the Department on rulemaking.

- Mike Bibo expressed concern: IDPH proposed these amendments on August the 14<sup>th</sup> at 3:02 pm. Meeting was at 8:15 the next morning, which gave board members less than 24 hours to review. For the Board to vote, a single document is needed in order to know what's being voting on. This should be something very similar to what is presented to the Secretary of State for rulemaking and thus far, the Board has not seen that document.
- Mr. Bibo requests that a special meeting be held on November 12, 2019, as Debra had proposed and had a placeholder set for that date if necessary. Debra Bryars requests a November 12, 2019 meeting – Mike Bibo, Donna Ginther (proxy for Ron Nunziato), Matt Hartman (proxy for Dr. Maurer) and Patrick Baalke agree as well. Meeting set for November 12, 2019.
- Mike Bibo made comment regarding Public Act 100-0010 that deals with joint rules at the same time (staffing issue, informed consent). Mr. Bibo has issues with the informed consent form. Discussion of prefiling with JCAR: Department will not have the luxury of time with this rulemaking due to the deadlines and the holiday season. When the Department does file, it will filing with the Secretary of State.

No further discussion.

#### **B. *Part 300 Informed Consent and Staffing Requirements***

Debra Bryars takes responsibility for the draft not being sent prior to meeting Going forward, documents will be dated for reference. The draft dated 11-07-19 was then distributed to all in the room and emailed to those attending via WebEx.

##### **Discussion regarding 11.07.19 drafted rules**

###### **Section 300.686 (Unnecessary, Psychotropic, and Antipsychotic Medications)**

- Section b) 2 & 3 –Donna Ginther would like “unless resident or residents surrogate decision maker withholds consent and an emergency does not exist” added after each.
- Section c) – Mike Bibo brought up discussion regarding *ordered by a physician* in second line. This is not statutory language. “Prescribing professional” suggested replacement.
- Section d) – Donna Ginther would like “unless resident or residents surrogate decision maker withholds consent and an emergency does not exist” added. There was also discussion regarding “each” dose reduction.
- Section e) – Donna Ginther would like the underscored word “additional” removed.

Discussion regarding ‘gradual reduction’, that’s typically not how the orders are written.

- Section f) – Donna Ginther suggested inserting “or approved” after *using forms provided and before by Department*. Discussion about law being around since 2010. Statute requires Department to post their form on the State’s website. The regulation should mimic what the law says. Comparable form being used by some of Donnas providers.
- Section g) – Donna Ginther led discussion in regard to standardized form being approved by Department. Donna commented there seems to be a conflict in the law.

- Mike Bibo would like to continue to beat drum that the law requires the Department's website to have the form posted. The form should 1) be written in plain language 2) be able to be downloaded from the Department's website, 3) shall include information specific to the psychotropic medication for which the consent is being sought and 4) to be used for every resident for which the psychotropic medication is being prescribed. Refers to Wisconsin's website where all the information is self-populated, and the burden is not on providers or the physician but on the Department. Very hesitant to just enact the portion that applies to Public Act 101-0010 without going back and doing what should have been done 10 years ago which is the informed consent that we've been discussing now for two years. Donna Ginther – when it was put into place in 2010 that we would have an agreement to use the WI form and that didn't happen. Mike Bibo doesn't want to move forward with the form not being completed. Per Debra Bryars that will be reviewed.
- Section g) 5, 10, 11 & 12 – Per Donna Ginther - concept in the statute was even if surrogate decision maker, individual has right to be present and aware. Should read "resident, residents surrogate decision maker, or both".
- Section g) 7 – Per Mike Bibo – the informed consent forms' "common side effects" should be pre-populated on the websites form. Side effects mentioned in verbal discussion must match the side effects the Department has listed on the form. George Logan asked for clarification – are you asking for a change Mike? No, he is not.
- Section h) – Mike Bibo hopes the Department is reasonable about understanding it will take longer than 100 days to implement regulations. Facilities will develop policies and procedures pursuant to what the facility understand the statutory language to be. There may be changes based on what regulations are adopted
- Donna Ginther – discussion regarding signature line on the informed consent form. Prescribing clinician signature. Discussion about nurses being able to sign the form. Per Debra Bryars, in the past- delegating? Has the person being delegated had the training to do the informed consent? Donna Ginther is suggesting taking out 'prescribing'.
- Donna Ginther asked a question of Erin Conley – are there finite dates on when certain things had to be completed (referencing the 100 days)? Per Sean Dailey, the date (January 1, 2021) included was just a placeholder and will be changed to whatever day the rule gets adopted. There are very finite dates listed in the staffing section. Are the dates listed flexible? Donna Ginther mentioned monetary penalties. Per Erin, statute overrides the rules.

## **Section 300.1230 Direct Care Staffing**

- Sections a) 1&2 – Matt Hartman is questioning how the criteria was determined for the skilled and intermediate care definitions. Per Debra Bryars part of the definitions were taken from the PBJ user manual verbiage. The skilled care services are outlined in the Medicare payment booklet. Per Donna Ginther Federal ‘skilled’ is different from State ‘skilled’. Discussion regarding which individuals would be considered skilled care. Debra Bryars requested comments from nursing leadership on skilled definition.
- Section b) 3) A-M – questions regarding where the intermediate nursing care definition was derived from. Debra Bryars will provide reference.
- Section c) – The reasoning behind this language being struck out? Calculating staffing based on PBJ. Per the PBJ hotline, that should not be the case. That’s not the way staffing is reporting but rather a daily midnight census. Per Donna Ginther, they would like this section changed to include realistic daily staffing requirements. If this is different than what you report to PBJ, you would have different staffing. Per Donna Ginther, only for determination of what staff are in the building. For census, its self-reporting.
- Section h) – The reason this language is being struck out? The care determination is not the role of surveyors.
- Section j) – This should mirror PBJ timeframe as it does now.
- Section j) 16) – This is a typo and should be 13. These calculations listed are just examples of staffing calculations. Feedback from facilities is that surveyors are not aware these listed are just examples. One of the dangers of putting it this way is that this is far more restrictive than what the law requires. The examples lead to greater confusion.

## **Section 300.Appendix A**

- Section A) 1) – Example of Staffing Calculations – This example is needed (total minimum hours of care).
- Section A) 2) – Delete this example (minimum hours needed per shift).

Discussion about these examples being requested to be removed in 2011/2012, JCAR insisted they be put back in as they are just examples. We’re now needing to clarify/simplify.

The Department requested examples from the industry to replace existing examples given be sent in (Appendix examples).

Board Members suggested that the department adopt a fillable form for consent for Psychotropic Medication Administration.

It was requested that all examples that reference by shift be deleted from Appendix A. No further discussion. Department will review advice from Board.

**III. Public Comment**

N/A- None

**IV. ADJOURN:**

Meeting ended at 12:00 p.m.

**V. NEXT MEETING**

Next Board Meeting is a special meeting scheduled for Thursday, November 12, 2019 at 10:00 am.